

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 157 of 1995

Date of decision: 13-7-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ORIENTAL INSURANCE COMPANY LTD

Versus

SAILESH BHARATKUMAR DUDHREJIYA  
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Appearance:

MR UDAY R BHATT for Petitioner

MR DH WAGHELA for Respondent No. 1

Respondent No. 2, 3 deleted  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/07/98

## ORAL JUDGEMENT

Heard the learned counsel for the parties.

This appeal is directed by the Insurance Company against the order dated 9-11-1993 passed by the Motor Accident Claims Tribunal (Special), Rajkot, below Exh.2 in Claim CaseNo.512/92. Under the impugned order, in exercise of the powers under section 140 of the Motor Vehicles Act, 1988, the appellant herein - insurance company -, owner and driver of the vehicle were ordered to pay jointly and severally the sum of Rs.12,000/- with interest at the rate of 15% per annum from the date of application till realisation to the claimants.

2. Learned counsel for the appellant contended that the day on which the accident had taken place the vehicle in question was not covered under the policy and as such the appellant could not have been made responsible for payment of the amount of interim compensation. However, learned counsel for the appellant admits that the cover note of the insurance taken by the vehicle in question has not been produced on record of the claim application. Learned counsel for the appellant has also not produced for the perusal of this court the proposal of the insurance company in respect of the vehicle in question. Learned counsel for the appellant, though attempts to make out a case that insurance coverage was not there, as it is only an order under which interim compensation has been awarded on the principle of no fault liability, I do not consider it proper to decide this controversy finally. It is the stage where both the parties have not produced any oral evidence. At this stage, as provided under section 140 of the Motor Vehicles Act, 1988 the Tribunal has to prima facie satisfy that the vehicle involved in the accident and it has resulted because of rash and negligent driving of the driver of the said vehicle and it is a case where interim compensation has to be ordered to be paid by the respondents inclusive of the insurance company to the claimants. The controversy as raised by the insurance company or either of the other parties is not finally decided at this stage. This is only a tentative decision taken, subject to the final decision to be given on the controversy raised by the insurance company or the other party at the time of final hearing. It is true that even if ultimately the Tribunal comes to the conclusion that for the reasons given, the claimants are not entitled for any compensation, still whatever amount awarded in exercise of powers under section 140 of the Motor Vehicles Act, 1988 to the claimants cannot be ordered to be refunded by him to the party by which that amount has been paid. But that does

not mean that the insurance company's grievance that it could not have been made liable for the payment of the amount of interim compensation once for all has been concluded by impugned order passed by the Tribunal awarding interim compensation as provided under section 140 of the Motor Vehicles Act. Primarily it is the liability of the owner to pay the amount of interim compensation to the claimants under section 140 of the said Act. The insurance company appears for the liability of the owner to make payment of the amount of interim compensation to the claimants under section 140 of the aforesaid Act. This decision given at this stage is not final adjudication on the issue whether the insurance company is liable for this payment to the claimant or not. At the final stage of adjudication of the claim this issue has to be decided by the Tribunal after considering the evidence produced by the parties, and where it decides the same in favour of the insurance company it is within the jurisdiction of the Tribunal to pass order of reimbursement of this amount by the owner to the insurance company. So whatever finding given by the Tribunal for its satisfaction to award interim compensation to the claimants as provided under section 140 of the Motor Vehicles Act is only tentative, subject to the final decision to be taken on the issues raised by the insurance company, after taking evidence of both the parties. It is made clear, though it is not necessary, that this point is open to the insurance company to agitate in the main proceedings and ultimately if it succeeds to prove that the vehicle was not covered by the policy of insurance, in these very proceedings the Tribunal may pass appropriate order against the owner of the vehicle to pay this amount, which is to be paid by the insurance company to the claimants in pursuance of the impugned order.

3. In the result this appeal fails and the same is dismissed. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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